



## **COTTONWOOD HEIGHTS PLANNING COMMISSION MEETING AGENDA**

Notice is hereby given that the Cottonwood Heights Planning Commission will hold a **Work Session Meeting** (Room 124, City Council Conference Room) beginning at **5:00 p.m.** and a **Business Meeting** (Room 5, Council Chambers) beginning at **6:00 p.m. on Wednesday, February 7, 2018** located at 2277 East Bengal Boulevard, Cottonwood Heights, Utah.

### **5:00 p.m. WORK SESSION (Room 124)**

- 1.0 Review Business Meeting Agenda**  
*(The Commission will review and discuss agenda items.)*
- 2.0 Discussion Item – North Gravel Pit Development Concept Proposal**  
*A conceptual development proposal for the northern portion of the gravel pit (6695 S Wasatch Boulevard) will be presented to the Commission by the potential project applicant.*
- 3.0 Discussion Item – 19.76 Zoning Ordinance Text Amendment**  
*Staff will update the Commission on the City Council's ongoing review of Chapter 19.76 of the zoning ordinance (Supplementary and Qualifying Regulations)*
- 4.0 Additional Discussion Items**  
*The Commission may discuss the status of pending applications and matters before the Commission and new applications and matters that may be considered by the Commission in the future.*

### **6:00 p.m. BUSINESS MEETING (Room 5)**

- 1.0 WELCOME/ACKNOWLEDGEMENTS** –Commission Chair
- 2.0 CITIZEN COMMENTS**  
*(Please note: In order to be considerate of everyone attending the meeting and to more closely follow the published agenda times, public comments will be limited to three minutes per person per item. A spokesperson who has been asked by a group that is present to summarize their concerns will be allowed five minutes to speak. Comments which cannot be made within these limits should be submitted in writing to the City Planner prior to noon the day before the meeting.)*
- 3.0 PUBLIC HEARINGS**
  - 3.1 (Project #LOT-18-001)**  
Public comment on a request from Buzz & Jen Warner to consolidate lots 18A and 18B of the Caballero Ranches Amended & Extended subdivision, located at 7673 & 7657 S Caballero Drive.
- 4.0 ACTION ITEMS**

**4.1 (Project #LOT-18-001)**

Action on a request from Buzz & Jen Warner to consolidate lots 18A and 18B of the Caballero Ranches Amended & Extended subdivision, located at 7673 & 7657 S Caballero Drive.

**(Project #ZTA-18-001)**

**4.2 Action on a city-initiated proposal to amend and restate Cottonwood Heights Code chapter 19.92 to utilize an Appeals Hearing Officer in place of the Board of Adjustment.**

**4.2 Approval of minutes for January 3, 2018**

**4.3 Approval of minutes for January 17, 2018**

**5.0 ADJOURNMENT**

*By Friday, February 2<sup>nd</sup> a copy of the foregoing notice was posted in conspicuous view in the front foyer of the Cottonwood Heights City Offices, Cottonwood Heights, Utah. A copy of this notice was emailed to the Salt Lake Tribune and Deseret News, newspapers of general circulation in the City by the Office of the City Recorder. The Agenda was also posted on the City's website at [www.cottonwoodheights.utah.gov](http://www.cottonwoodheights.utah.gov) and the State Public Meeting Notice website at <http://pmn.utah.gov>*

*DATED THIS 1<sup>ST</sup> DAY OF FEBRUARY, 2018*

*Paula Melgar, City Recorder*

*Planning Commissioners may participate in the meeting via telephonic communication. If a Commissioner does participate via telephonic communication, the Commissioner will be on speakerphone. The speakerphone will be amplified so that the other Commissioners and all other persons present in the room will be able to hear all discussions. In compliance with the Americans with Disabilities Act, individuals needing special accommodations or assistance during this meeting shall notify the City Recorder at (801)944-7021 at least 24 hours prior to the meeting. TDD number is (801)270-2425 or call Relay Utah at #711. If you would like to submit written comments on any agenda item they should be received by the Planning Division no later than Tuesday at noon. Comments can be emailed to [bberndt@ch.utah.gov](mailto:bberndt@ch.utah.gov). After the public hearing has been closed, the Planning Commission will not accept any additional written or verbal comments on the application.*

**Planning Commission Staff Report**  
**Meeting Date: February 7<sup>th</sup>, 2018**



**FILE NUMBER/**  
**PROJECT NAME:** LOT-18-001; Caballero Ranches Amended & Extended Lot Consolidation

**LOCATION:** 7673 & 7657 S Caballero Drive

**REQUEST:** Lot Consolidation of 2 lots on Caballero Drive

**APPLICANT:** Tri City Construction

**OWNER:** ABCW LLC (Buzz & Jen Warner)

**ENGINEER:** Oak Hills Surveying

**RECOMMENDATION:** APPROVE subject to attached conditions of approval

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**APPLICANT'S PROPOSAL**

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The applicant is requesting approval of a lot consolidation of 2 existing parcels located on Caballero Drive, both lots currently a part of the Lot 18 Caballero Ranches Amended & Extended subdivision. This request, therefore, also constitutes an amendment to the Lot 18 Caballero Ranches Amended & Extended subdivision.



## BACKGROUND

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The current zoning designation of the subject property is RR-1-43 (Rural Residential Zone). This zoning allows for the construction of one single-family dwelling on a property, together with limited agricultural uses. This property was originally one large lot, lot 18 of the Caballero Ranches subdivision, which was recorded in 1956. In 2006, the plat was amended to add additional property to the north and split lot 18 into lots 18A and 18B. The applicant is requesting a lot consolidation to combine the lots in order to construct a single-family dwelling and detached garage on the property.

The RR-1-43 zone requires a minimum lot size of 43,560 square feet. The current lot sizes are 0.89 acres (Lot 18A) and 0.90 acres (Lot 18B). Both existing lots are smaller than the minimum required lot size in the RR-1-43 zone. After consolidation, the proposed lot will be 1.787 acres, or 77,862 square feet. The minimum lot width in the RR-1-43 zone is 100 feet. The proposed width after consolidation will be 198.33 feet. The proposed plat keeps the existing creek, storm drain, irrigation, and utilities easements in place. The applicant is proposing to vacate the bridle path easement. A separate portion of the bridle path easement on Caballero Ranches lots 1-11 was vacated in 2017 under application SUB-17-002. Both sections of the easement have structures encroaching on the path and no dedicated trail or visual evidence of use of the easement is present.

***Staff Analysis: The applicant's proposal meets the provisions of the RR-1-43 zone.***

### **Subdivision Ordinance**

Title 12 of the Cottonwood Heights Municipal Code dictates the Planning Commission's role in subdivision plat approval. In particular, Planning Commission approval is necessary for amendments to existing subdivisions. Chapter 12.26.010 defines the approval process:

*The planning commission may, with or without a petition, consider any proposed vacation, alteration, or amendment of a subdivision plat, any portion of a subdivision plat, or any street, lot, or alley contained in a subdivision plat at a public hearing.*

***Analysis: Because the proposed lot consolidation will affect a lot in an existing subdivision (Lot 18 Caballero Ranches Amended & Extended), a public hearing before the planning commission is required.***

### **Noticing**

Hearing notices were sent to property owners within 400 feet of the subject property, as required by ordinance (12.26.020.A).

## CONTEXT

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### **Adjacent Land Use**

The property is adjacent to single-family residential property to the west, south, and east. Crestwood Park borders the property to the north.

**Attachments**

1. Conditions of Approval
2. Sample Motions
3. Proposed Plat Amendment & Plans

Staff: Andy Hulka, Associate Planner, (801) 944-7065

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**CONDITIONS OF APPROVAL**

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1. The applicant shall work with staff to address all technical corrections on the preliminary plat, in compliance with all applicable city ordinance regulations;
2. The applicant shall obtain all necessary permits prior to constructing any new structure on the proposed lots;
3. Provide legal evidence of how the bridle path easement was created. If the easement was created by deed, or based on another written document, provide proper documentation to legally extinguish it. The burden shall be on the applicant to demonstrate satisfactory legal vacation of the easement. Such evidence of plat vacation must be provided to city staff and approved prior to final plat recordation.

**Findings for approval:**

- The Bridle Path easement is a private easement, and proper evidence of easement vacation must be provided to city staff prior to final approval;
- The proposed subdivision meets the applicable provisions of the Cottonwood Heights subdivision ordinance and the Cottonwood Heights zoning ordinance;
- Proper notice was given in accordance with local and state requirements;
- A public hearing was held in accordance with local and state requirements;

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**SAMPLE MOTIONS**

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**Approval**

I move that we approve project LOT-18-001, an application by Buzz and Jen Warner, for approval of a lot consolidation and subdivision plat amendment of the Lot 18 Caballero Ranches Amended & Extended subdivision, affecting the property located at 7673 & 7657 S Caballero Drive, including all conditions and findings found in the staff report dated February 7, 2018.

- List any additional conditions...
- List findings for additional conditions...

**Denial**

I move that we deny project LOT-18-001, an application by Buzz and Jen Warner, for approval of a lot consolidation and subdivision plat amendment of the Lot 18 Caballero Ranches Amended & Extended subdivision, affecting the property located at 7673 & 7657 S Caballero Drive, including all conditions and findings found in the staff report dated February 7, 2018.

- List findings for denial...



## **MEMORANDUM**

To: Cottonwood Heights Planning Commission  
From: Mike Johnson, Senior Planner (801) 944-7060  
Meeting Date: January 17, 2018 (Public Hearing)  
Subject: Proposed Ordinance – Appeals Hearing Officer

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### **REQUEST**

At the direction of the City Council, staff is proposing to replace the city's board of adjustment ("BOA") with an Appeals Hearing Officer. Chapter 19.92 of the city's zoning ordinance, Board of Adjustment, would therefore become obsolete. As such, staff is requesting to amend and restate chapter 19.92 to establish the Appeals Hearing Officer in place of the board of adjustment.

### **RECOMMENDATION**

Staff recommends that the planning commission review the proposed Appeals Hearing Officer ordinance, make any changes it feels necessary, and forward a recommendation to the City Council after at least one public hearing.

### **MODEL MOTIONS**

#### ***Approval***

I move that we forward a positive recommendation to the City Council for project ZTA-18-001, a city initiated request to amend and restate Cottonwood Heights Code chapter 19.92 to utilize an Appeals Hearing Officer in place of the board of adjustment.

#### ***Denial***

I move that we forward a negative recommendation to the City Council for project ZTA-18-001, a city initiated request to amend and restate Cottonwood Heights Code chapter 19.92 to utilize an Appeals Hearing Officer in place of the board of adjustment.

### **Attachment**

- 01-11-2018 Appeals Hearing Officer Ordinance Draft

## Chapter 19.92 APPEALS HEARING OFFICER

### Sections:

- 19.92.010 Appeals hearing officer.
- 19.92.020 General procedures for hearings.
- 19.92.030 Variances.
- 19.92.040 Appeals of administrative decisions.
- 19.92.050 Appeal of decision.
- 19.92.060 Stay of decision.

### 19.92.010 Appeals hearing officer.

A. Position Created. The position of appeals hearing officer is created pursuant to authority granted by the Municipal Land Use, Development, and Management Act, UTAH CODE ANN. 10-9a-101 *et seq.* (the "*Act*"). The appeals hearing officer shall replace in all respects the previous duties of the city's board of adjustment.

B. Powers and Duties. The appeals hearing officer is the city's appeal authority pursuant to section 10-9a-701 of the Act, and shall have the following powers and duties:

1. Hear and decide appeals where it is alleged that there is an error in any order, requirement, decision or determination made by an administrative official or the planning commission in the enforcement or interpretation of this title or of any ordinance adopted pursuant thereto, including conditional use decisions. Appeals may not be used to waive or modify the terms or requirements of this title.

2. Authorize variances from the terms of this title pursuant to the procedures and standards set forth in section 19.92.030. "Variances," of this chapter.

3. Hear and decide appeals from decisions made by an administrative official or the planning commission concerning subdivisions or subdivision amendments pursuant to Title 12 of this code.

4. Hear and decide appeals from applications to amend, modify, expand, nonconforming uses pursuant to section 19.88.070.

C. Qualifications. Each appeals hearing officer shall be appointed by the city manager with the advice and consent of the city council. The manager may appoint more than one appeals hearing officer, but only one appeals hearing officer shall consider and decide any matter properly presented for appeals hearing officer review. An appeals hearing officer may serve a maximum of three consecutive full terms of five years each. The appeals hearing officer shall either be law trained or have significant experience with land use laws and the requirements and operations of administrative hearing processes.

D. Conflict Of Interest. An appeals hearing officer shall not participate in any appeal in which the appeals hearing officer has a conflict of interest under the standards set forth in the Municipal Officers' and Employees' Ethics Act, UTAH CODE ANN. 10-3-1301 *et seq.*

E. Compensation. Each appeals hearing officer shall be compensated for its services on a reasonable, uniform basis applicable to all the city's appeals hearing officers. The basis and rate of compensation shall be determined by the manager in consultation with the mayor and the city attorney.

E. Removal. An appeals hearing officer may resign at any time upon at least 60 days' prior written notice to the manager. An appeals hearing officer may be removed for cause by the manager for violation of this title or any applicable policies and procedures following receipt by



the manager of a written complaint filed against the appeals hearing officer. If requested by the appeals hearing officer, the manager shall provide the appeals hearing officer with a public hearing conducted by the manager or a qualified designee. Any vacancy shall be promptly filled by the manager with the advice and consent of the city council.

#### **19.92.020 General procedures for hearings.**

In addition to any other procedures in this title which are applicable to hearings conducted by the appeals hearing officer:

- A. The appeals hearing officer may administer oaths and compel the attendance of witnesses.
- B. All hearings before the appeals hearing officer shall comply with the requirements of the Open and Public Meetings Act, UTAH CODE ANN. 52-4-101 *et seq.*
- C. If the appeals hearing officer is authorized by this code to hear and decide appeals of planning commission decisions, then the appeals hearing officer shall review the record of the planning commission decision to determine whether the decision is not illegal and is supported by substantial evidence in the record and therefore not so unreasonable as to be arbitrary and capricious.
- D. If the appeals hearing officer is authorized by this code to hear and decide appeals of city administrative official decisions, then the appeals hearing officer shall make a *de novo* review of any such issue.
- E. The appeals hearing officer shall:
  - 1. Keep minutes and/or audio recordings of his or her proceedings; and
  - 2. Keep records of his or her examinations and other official actions.
- F. The appeals hearing officer shall file his or her records in the office of the city's community development department. All such records are subject to the Government Records Access and Management Act, UTAH CODE ANN. 63G-2-101 *et seq.*
- G. Decisions of the appeals hearing officer become effective at the meeting in which the decision is made, unless a different time is designated at the time the decision is made, such as the date of issuance of any written decision by the appeals hearing officer.

#### **19.92.030 Variances.**

A. Any person or entity desiring a waiver or modification of the requirements of this title as applied to a parcel of real property that he or she owns, leases or holds some other beneficial interest may apply to the appeals hearing officer for a variance from the terms of this title. The variance procedures in this section are intended to provide a narrowly circumscribed means by which relief may be granted from unforeseen particular applications of this title that create unreasonable hardships. When such hardships may be more appropriately remedied, if at all, pursuant to other provisions of this title, the variance procedure is inappropriate.

##### **B. Procedure.**

1. Application. An application for a variance shall be filed with the director of community development (the "*director*") and shall include the following items and information unless determined inapplicable by the director:

- (a) Written Information:
  - (i) The property owner's name and address and the owner's signed consent to the filing of the application;
  - (ii) The applicant's name and address, if different than the owner, and the applicant's interest in the subject property;
  - (iii) The names and addresses of all professional consultants, if any, advising the applicant



with respect to the application;

- (iv) The address and legal description of the subject property;
- (v) The Sidwell map numbers identifying the property; and
- (vi) The names and addresses of the owners of all real property located within \_\_\_\_ feet of the subject property.

2. Graphic Information.

- (a) A site plan drawn to scale identifying all property lines, structures, including primary and accessory structures, fences, right of way, and their respective distances from the property lines;
- (b) An elevation drawing to scale showing all elevations of existing and proposed structures;
- (c) When the variance involves building height a streetscape plan showing the height of the buildings on both sides of the street to the nearest intersection;
- (d) When the variance involves grade changes, a topographical drawing prepared by a licensed surveyor shall be included. The existing topography shall be shown in dashed lines at two foot intervals and the proposed grade shall be shown in solid lines at two foot intervals. All retaining walls shall be identified and the height shall be shown on the plan relative to the proposed grades. Retaining walls shall be designed by a structural engineer licensed to practice in the state; and
- (e) When a variance request involves setbacks or height or grade changes a complete landscape plan shall be provided, which shall show landscape design and identify all species and caliper of proposed plants.

3. Variance Information.

- (a) The specific feature or features of the proposed use, construction or development that require a variance;
- (b) The specific provision of this title from which the variance is sought and the precise variance being sought;
- (c) A statement of the characteristics of the subject property that prevent compliance with the provisions of this title and result in unnecessary hardship;
- (d) A statement of the minimum variation of the provisions of this title that would be necessary to permit the proposed use, construction or development;
- (e) An explanation of how the application satisfies each standard set forth in subsection C of this section; and
- (f) Any other information identified by the director to be pertinent to the requested variance.

4. Fees. The application shall be accompanied by the applicable fees shown on the city's consolidated fee schedule. The applicant shall also be responsible for payment of all fees established for providing the public notice required by this title.

5. Hearing. Upon receipt of a complete application for a variance, the appeals hearing officer shall hold a hearing with notice in accordance with the requirements of this chapter.

6. Decision. Upon the close of the hearing the appeals hearing officer shall render its decision, granting, granting with conditions, or denying the variance.

C.

1. The appeal hearing officer may authorize in specific cases variance from the terms of this title only if:

- (a) Literal enforcement of the zoning ordinance would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of the zoning ordinance;
- (b) There are special circumstances attached to the property that do not generally apply to other properties in the same district;
- (c) Granting the variance is essential to the enjoyment of a substantial property right possessed

by other property in the same district;

(d) The variance will not substantially affect the general plan and will not be contrary to the public interest; and,

(e) The spirit of the zoning ordinance is observed and substantial justice is done.

2. In determining whether enforcement of the zoning ordinance would cause unreasonable hardship under subsection (C)(1)(a) of this section, the appeals hearing officer may not find an unreasonable hardship unless the alleged hardship:

(a) Is located on or associated with the property for which the variance is sought, and

(b) Comes from circumstances particular to the property, not from conditions which are general to the neighborhood.

3. In determining whether or not enforcement of the zoning ordinance would cause unreasonable hardship under subsection (C)(1)(a) of this section, the appeals hearing officer may not find an unreasonable hardship if the hardship is self-imposed or economic.

4. In determining whether or not there are special circumstances attached to the property under subsection (C)(2)(b) of this section, the appeals hearing officer may find that special circumstances exist only if special circumstances:

(a) Relate to the hardship complained of; and

(b) Deprive the property of the privileges granted to other properties in the same district.

D. The applicant shall bear the burden of proving that all the conditions justifying a variance have been met.

E. Variances run with the land.

F. The appeals hearing officer shall not grant a variance that:

1. Is intended as a temporary measure only;

2. Is greater than the minimum variation necessary to relieve the unnecessary hardship demonstrated by the applicant; or

3. Authorizes uses not allowed by law (i.e., a "use variance").

G. In granting a variance, the appeals hearing officer may impose additional requirements on the applicant that will:

1. Mitigate any harmful effects of the variance; or

2. Serve the purpose of the standard or requirement that is waived or modified.

H. A variance less than or different than that requested may be authorized when the record supports the applicant's right to some relief but not to the relief requested.

#### **19.92.040 Appeals of administrative decisions.**

A. Authority. As described in section 19.92.010(B), the appeals hearing officer shall hear and decide appeals alleging an error in any decision made by a city administrative official as well as administrative decisions of the planning commission. Planning commission recommendations to the city council concerning proposed amendments to the city's zoning ordinance, zoning map or general plan are not appealable and therefore may not be appealed to the appeals hearing officer.

B. Parties Entitled to Appeal. An applicant or any other person or entity adversely affected by a decision administering or interpreting this title may appeal to the appeals hearing officer.

C. Filing Procedures. An appeal shall be made in writing within ten days of the administrative decision by the city administrative official or planning commission and shall be filed with the city's community development department. The appeal shall specify the decision appealed, the alleged error made in connection with the decision being appealed, and the reasons the appellant

claims the decision to be in error, including every theory of relief that can be presented in district court.

D. Fees. The appeal shall be accompanied by the applicable fees shown on the city's consolidated fee schedule. The appellant shall also be responsible for payment of all fees established for providing any required public notice.

E. Stay. An appeal to the appeals hearing officer shall stay all further proceedings concerning the matter about which the appealed order, requirement, decision, determination, or interpretation was made unless the director of the city's community development department certifies in writing to the appeals hearing officer, after the appeal has been filed, that a stay would, in the director's opinion, be against the best interest of the city.

F. Notice. Upon receipt of an appeal of an administrative decision, the appeals hearing officer shall schedule and hold a public hearing in accordance with the standards and procedures set forth in this chapter. Notification of the date, time and place of the hearing shall be given to the appellant, the respondent (i.e., the land use applicant) and the city at least 15 calendar days before the hearing, and notice of the hearing shall be posted on the city's website and the state public notices website at least five calendar days before the hearing.

G. Time Limitation. All appeals shall be heard within 180 days after the filing of the appeal. Appeals not heard within this time frame due to the appellant's failure to expeditiously pursue its appeal will be considered void and withdrawn by the appellant.

H. Burden Of Proof. The appellant has the burden of proving the decision appealed is incorrect.

I. Standards of Review. The standards of review shall be as specified in section 19.92.020. In appeals on the record of administrative decisions of the planning commission, no new evidence shall be heard or considered by the appeals hearing officer. In *de novo* appeals of decisions of administrative officials, the appeals hearing officer shall review the matter appealed anew, based upon applicable procedures and standards for approval and giving no deference to the decision below. The appeals hearing officer shall review the decision based upon applicable standards and shall determine its correctness.

J. Decision. The appeals hearing officer shall uphold the decision unless it is not supported by substantial evidence in the record or it violates a law, statute, or ordinance in effect when the decision was made. The appeals hearing officer shall render a written decision on the appeal. Such decision may reverse or affirm, wholly or in part, or may modify the administrative decision.

K. Effective Date; Notification. A decision by the appeals hearing officer shall become effective on the date the decision is rendered. Notification of the decision of the appeals hearing officer shall be sent by mail to all parties to the appeal within ten days after the appeals hearing officer's decision.

L. Record of Proceedings. The proceedings of each appeal hearing shall be recorded on audio equipment. The audio recording of each appeal hearing shall be kept for a minimum of 60 days. Upon the written request of any interested person, such audio recording shall be kept for a reasonable period of time beyond 60 days, as determined by the appeals hearing officer. Copies of the recordings of such hearings may be provided, if requested, at the expense of the requesting party. The appeals hearing officer may have the appeal proceedings contemporaneously transcribed by a court reporter.

M. Policies and Procedures. The manager may adopt policies and procedures, consistent with the provisions of this section, for processing appeals of administrative decisions, the conduct of an appeal hearing, and for any other purpose considered necessary to properly consider an appeal.

N. Submissions. All briefs, transcripts and other written materials desired to be submitted by the appellant, the respondent or the city in connection with an appeal shall be provided to the appeals hearing officer at least ten business days before the hearing date.

**19.92.050 Appeal of decision.**

If authorized by state statute, any person adversely affected by a final decision made by the appeals hearing officer may file a petition for review of the decision with the district court within 30 days after the decision is rendered.

**19.92.060 Stay of decision.**

The appeals hearing officer may stay the issuance of any permits or approval based on its decision for 30 days or until the decision of the district court in any appeal of the decision.